

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 4656 OF 2016

D Abraham And Sons Pvt. Limited	...Petitioner
<i>Versus</i>	
Nanavati Specialty Chemicals Private Limited And Anr.	...Respondents

WITH
Writ Petition NO. 4662 OF 2016

D Abraham And Sons Pvt. Limited	...Petitioner
<i>Versus</i>	
Nanavati Specialty Chemicals Private Limited And Anr.	...Respondents

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Mr. Shirish Joshi i/b. Kishore N.Shriyan, Advocate for the
Petitioner.
Mr. Dinesh Rane, Advocate for Respondent No.1.
Mr. Ashish Dubey i/b. Mr. Ashok Chopra, Advocate for
Respondent No.2.

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CORAM : R. G. KETKAR, J.

DATE : 16th June, 2016

P.C.

1. Heard Mr. Shirish Joshi, learned Counsel for the
petitioner, Mr. Dinesh Rane, learned Counsel for respondent
No.1 and Mr. Ashish Dubey, learned Counsel for respondent
No.2, at length.

2. Writ Petition No.4656/2016 is directed against the judgment and order dated 19.3.2015 passed by the learned Judge, presiding over Court Room No.20 of the Court of Small Causes, Mumbai below Exhibit-12 in R.A.E. & R. Suit No.252/414 of 2009 as also the judgment and order dated 16.2.2016 passed by the Appellate Bench of the Court of Small Causes, Mumbai in Revision Application No.179 of 2015. By these orders, the Courts below rejected the application made by the petitioner for condonation of delay in filing the written statement.

3. Writ Petition No.4662/2016 is directed against the judgment and order dated 1.7.2015 passed by the learned Judge, presiding over Court Room No.20 of the Court of Small Causes, Mumbai below Exhibit-15 in R.A.E. & R. Suit No.252/414 of 2009 as also the judgment and order dated 16.2.2016 passed by the Appellate Bench of the Court of Small Causes, Mumbai in Revision Application No.232 of 2015. By these orders, the Courts below rejected the application made by defendant No.2 for setting aside order dated 4.9.2012 thereby ordering suit to proceed exparte against defendant No.2.

4. After arguing the petitions for quite sometime, Mr. Joshi, upon taking instructions from Mr C.V. Shah, one of the Directors of the petitioner, seeks permission to withdraw both the Petitions with liberty to take out fresh applications (i) for setting aside the order dated 4.9.2012 and (ii) for condoning the delay in filing the application for setting aside the order dated 4.9.2012. He submitted that the petitioner will give better and further particulars for setting aside order dated 4.9.2012 as also for condoning the delay in filing the application. If such better and further particulars are given, he submits that the learned trial Judge may be directed to consider the applications uninfluenced by the impugned orders. He assures that on or before 30.6.2016, the petitioner will take out these applications and serve copy in advance on the other side.

5. In view thereof, on the motion made by Mr. Joshi, the petitions are allowed to be withdrawn with liberty as prayed for. It is expressly made clear that if the petitioner does not furnish better and further particulars for setting aside the order dated 4.9.2012 as also for condoning the delay in filing the application, the respondents will be justified in relying upon the

impugned orders and to contend that as the petitioner has not given better and further particulars, no case is made out for granting such applications. However, if the petitioner gives better and further particulars in the applications, the learned trial Judge will decide the applications uninfluenced by the observations made in the impugned orders. All contentions of the respondents on merits are expressly kept open. Petitions are disposed of as withdrawn in aforesaid terms. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)